Supreme Court, U.S.
F I L E D

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No._____

In The

Supreme Court of the United States

JOHN E. JUDGE

Petitioner

vs

JAMES W. HATCH, HATCHCO INC. and

HATCHCO INC. EMPLOYEE PENSION PLAN

Respondent

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN E. JUDGE
2915 West Charleston Blvd., Ste. 7
Las Vegas,
Nevada, 89102

35 pp

QUESTIONS PRESENTED

Did the District Court err when it filed a Motion To Dismiss after the complaint had been stricken ?.

Did the District Court err when it filed a Motion To Dismiss in violation of Rule 7 of the Federal Rules of Civil Procedure ?.

Did the District Court err in finding Petitioner to be a vexatious litigant when there had not been a case in Federal Court decided adversely to him ?

Did the 9th. Circuit Court of Appeals err when it affirmed the District Court's decision to file the Motion To Dismiss as a responsive pleading to a complaint which had been stricken by the Court , and which Motion violated FRCP # 7 and 7(a) ?

LIST OF PARTIES

All parties are named in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a Writ Of Certiorari to review this case decided by the United States Court Of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Opinion of the Court of Appeals for the Ninth Circuit is an unpublished opinion cited as No. 98 - 16227, (June 16, 2000) and reprinted in the Appendix at App. 1.

The Opinion of the United States District Court is No. CV-S-96-972-PMP (LRL), also an unpublished opinion, entered and served on June 5, 1998, and is reprinted in the Appendix at App. 2.

STATEMENT OF JURISDICTION

The Jurisdiction of this Court is invoked under the provisions of U.S.C. # 1254 (1)

PROVISIONS INVOLVED

Constitutional provisions.

There do not appear to be any Constitutional issues involved.

Statutory provisions.

Federal Rules of Civil Procedure - Rules 7, 7(a) and 15 (a).

Judicial decisions.

Federal

Opinion of the United States 9th Circuit Court of Appeals .

Opinion of the United States 11th. Circuit Court of Appeals

State

Opinion of the Supreme Court of California

Opinion of a California Appellate Court.

STATEMENT OF THE CASE

Plaintiff filed an amended complaint in the United States District Court for the District of Nevada. Inexplicably the Proof of Service became detached with the result the complaint was stricken by Court Order on February 19, 1998. The Order was filed at 8.42 A.M. on that day. The Order is reprinted in the Appendix at App. 3. At 3.04 P.M. on the same day Defendants filed a Motion To Dismiss the complaint.

Rule 7 (a) of the Federal Rules of Civil Procedure lists the documents which are " responsive " pleadings to a complaint. Motions To Dismiss are not listed.

Petitioner opposed the Motion on the ground it was not a "pleading" under Rule 7 and cited the ruling of the 11th. Circuit Court of Appeals in *Burns v Lawther* 53 F. 3rd. 1137, (infra) .and on the additional ground that since the complaint had been stricken it was not active. The Court of Appeals for the Ninth Circuit affirmed the decision of the District Court by its ruling entered on June 16, 2000.

The District Court's jurisdiction derives from diversity of citizenship.

REASONS FOR GRANTING THE WRIT

This case presents the Court with an opportunity to resolve the issue of whether a Motion To Dismiss constitutes a responsive pleading to a complaint under Rule 7 of the Federal Rules of Civil Procedure. The 11th. Circuit Court of Appeals' decision in *Burns v Lawther*, quoted infra that it does not is in conflict with the effective ruling by the 9th. Circuit Court of Appeals to the contrary in this case. The Court in *Burns v Lawther*, 53 F. 3rd. 1237, (1995) at 1240-1241 ruled as follows :

> " The Federal Rules of Civil Procedure like any statutory scheme, should be given their plain meaning. Fortunately the Rules themselves provide a clear and precise meaning of "pleadings" in Rule 7. Rule 7 (a) states " There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim; a third-party complaint...and a third-party answer.....*No other pleading shall be allowed*, except that the Court may order a reply to an answer or a third - party answer. Fed. R. Civ. P (7(a). (emphasis by Court).

Rule 7 clearly states that a pleading is (1) a complaint. (2) an answer, (3) a reply to a counterclaim, (4) answer to a cross - claim, (5) a third - party complaint, or (6) a third - party answer. Under the well-settled doctrine of *inclusio unius, exclusio alterius*, the listing of some things implies that all things not included in the list were purposefully excluded . Rule 7 purposefully excludes everything else from the definition of pleadings. Finally we note that this Court, in determining what constitutes a pleading under Rule 15, has stated that " neither a motion to dismiss nor a motion for summary judgment constitutes responsive pleading for purposes of the federal rules " .....(citations).

The Court, in *Peoples Counsel v Public Service Commission*, 451 A. 2d. 945, 948 ruled that " When a rule adopted by the Court of Appeals says that something shall be done, the Court jolly-well means for it to be done; the direction is a mandatory one and it must be obeyed ". (emphasis supplied by the Court) In *Williams v State*,(Fla. App) 318 So. 2d. 902, 903, the Court ruled " The word shall as used by the Supreme Court, when it is establishing Rules of Court Procedure means exactly what

it usually means as defined in an acceptable dictionary and thus it is error for a trial court to fail to apply it "..*Black's Law Dictionary*, 6th. Ed. (1990), an acceptable dictionary, defines shall on page 1375, Col. 1 as follows :

> "the term shall is a word of command, and one which has always been, or which must be, given a compulsory meaning as denoting obligation. The word in ordinary meaning means "must", and is inconsistent with a concept of discretion. It has the invariable significance of excluding the idea of discretion, and has the significance of operating to impose a duty which may be enforced ".

From the above it is clear that the Defendants' Motion To Dismiss is not a " pleading " in response to Petitioner's complaint and must be disregarded. It is also clear that the United States Court of Appeals for the 9th Circuit erred in affirming the decision of the District Court, because its opinion is violative of FRCP 7, and is in conflict with the ruling of the 11th. Circuit in Burns v Lawther, supra.

Since no other pleading has been filed by Defendants in reply to the complaint, and since the time for filing an

answer as defined in Rule 15 of the Federal Rules of Civil Procedure has expired, the allegations of the complaint are uncontroverted and Petitioner is entitled to judgment as prayed.

The District Court also erred in failing to follow the law as stated by the following Courts, all of which were cited to it by the Petitionr in his " Response To Court Order " filed on April 16, 1998.

In *NL Industries v Kaplan*, 792 F. 2d. 896, 898, (9th. Cir. 1986) the Court ruled that " In considering a Motion To Dismiss the Court must accept all material allegations of the complaint in question as true ". (emphasis added).

The United States Supreme Court in *Jenkins v McKeithen* 395 U.S. 411, 421, 89 S. Ct. 1843, 1848, 23 L. Ed. 2d. 404, stated the law to be :

> " Moreover, in evaluating the complaint, the Court is to construe the pleading in the light most favorable to the pleader and all doubts are to be resolved in the pleader's favor....The complaint should not be dismissed unless it appears the plaintiff could prove no set of facts in support of his claim which would

entitle him to relief". (citations) (emphasis added).

Plaintiff's complaint clearly shows, by the several documents attached thereto in support of his allegations consisting of two Grant Deeds both or which were recorded in the Office of the County Recorder of Los Angeles County, State of California, and two letters from the Internal Revenue Service confirming that the Grantor thereof, Hatchco Inc.Employee Pension Plan never came into existence, and therefore the Grant Deed that it executed and caused to be recorded is fraudulent.

Petitioner also submitted a Memorandum of Points and Authorities with his Opposition to the Motion To Dismiss for the proposition that he was entitled to the relief prayed, "that he can prove any set of facts in support of his claim" (Fed. Rules Civ. Proc. Rule 12 (b)(6) and 28 U.S.C.A.)

Based on the above it is clear that the District Court erred when it granted Defendants' Motion To Dismiss the complaint " with prejudice ".

In its order entered on May 22, 1998 (App. 1) granting the Defendants' Motion to Dismiss the Complaint " with prejudice " the District Court made several misstatements of fact as follows.Under the heading **Factual Background:**

In the first paragraph it stated " since the foreclosure Judge has filed19 lawsuits involving the facts surrounding the loan default and foreclosure ". The 19 cases consisted of ten (10) filed by Corporations of which Judge was president in Small Claims Court. Corporations cannot be represented in Small Claims Court by attorneys in California. California Civil Code Section 391, the vexatious litigant statute, specifically by its terms excludes those cases from consideration for purposes of declaring one to be a vexatious litigant. It provides in relevant part : (b) "" Vexatious litigant " means a person who does any of the following (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court....." (emphasis added). Three, in two of which Plaintiff herein was one of the plaintiffs, were filed in Southwst Los Angeles Superior Court, were not served, and were voluntarily dismissed without prejudice, at the request of Hatch, because Judge and Hatch were continuing negotiations so that he, Judge, could regain possession of his home. As soon as the dismissals were filed Hatch discontinued the negotiations. These cases were held to be " res judicata " by Judge Parkin

when he declared Judge to be a vexatious litigant The California Court of Appeal reversed this ruling citing *Wells vs. Marina City Properties Inc.* (1981) 29 Cal. 3rd. 781, 784, and *Westcoast Development v Reed* (App 4. Dist. 1992) 3 Cal. Rptr. 2d. 790, 2 Cal. App. 4th. 693. These cases were cited to the United States District Court by Plaintiff Judge on page 3 of his " Response To Court Order ", filed May 22 1998, which Response was dated June 11, 1998 and filed June 12, 1998.

When Hatch discontinued the negotiations Judge filed three cases identical to those which had been dismissed in the Southeast District because that was the district in which the act of foreclosure had occurred. Again Judge was a Plaintiff in only two of the actions. These were active cases in the court which issued the vexatious litigant ruling. There were therefore no cases cited to the court which had been decided adversely to him in " the immediately preceding seven-year period " as is required by the vexatious litigant statute, *supra*. This has been discussed in detail in "Plaintiff's Response To Court Order ", *supra*, on page 2 - 10, filed in the U.S.

District Court on June 1, 1998.

With respect to the Motion To Set Aside the Unlawful Detainer judgment on the grounds that the Plaintiff therein, Hatchco Inc Employee Pension Plan never existed as proof of which Judge provided two letters from the Internal Revenue Service, and even if it did exist but was not qualified. under the Internal Revnue Code ERISA provisions, it is not a legal entity, being a contract between an employer and the employees See e.g. *Chicago District Council of Carpenters' Pension Fund v Exhibition Contractors Company,* (1985) 618 F, Supp. 234, 237, Judge cannot understand why the Court ruled against him and also declared his wife and son to be vexatious litigants since neither of them had filed any complaint. Neither can he understand why the Court of Appeal affirme the judgment.

The District Court, in its opinion entered on May 20, 1998, App. 3 hereto, stated " Having reached the end of his litigation possibilities in the California state court Judge filed the current lawsuit, based on the same facts as the previous lawsuits, in the District of Nevada in 1996. This is not true. Ten of the nineteen cases were filed by corporations in an

oseffort to recover storage costs because they were evicted from their offices, Judge's home, without notice as required by the unlawful detainer statute. Three of the cases were dismissed without prejudice at the specific request of one of the defendants and were never served. Under *Sandstrom vs. Chemlawn Corp.* 904 F. 2d. 83 (1st. Cir. 1990) " these proceedings become a nullity " because " the page is once again pristine ". Those cases were refiled because Defendant James W. Hatch refused to continue in the escrow he had entered into with Judge to recover his home.when he became aware that the dismissals wre filed. The issues in the actions in which Judge was one of the plaintiffs were recovery of usurious interest, and libel, negligent and intentional infliction of emotional distress.

The complaint in U.S. District Court seeks to set aside two (2) fraudulent conveyances of the property one of which occurred on April 6, 1994 when the non-existent pension plan executed a Quitclaim Deed to Hatchco Inc, and the other occurred in 1996 when Hatchco Inc. conveyed the property to a purchaser. Certified copies of both documents were attached to the complaint. Judge did not know about them until 1996. Therefore

the issues were not "fully and finally litigated in the California Courts " (Plaintiff's Response To Court Order filed June 12, 1998, page 16-17). Defendants placed the California cases under the jurisdiction of the District Court, requiring Plaintiff to respond thereto. Because the " vexatious litigant " ruling is "against the law " as that term has been interpreted by the Courts when "the evidence is insufficient in law" this ground, when relied on, requires the reviewing Court to make an examination of the evidence in the trial to determine if the verdict or other decision had substantial support in the evidence". *Tagney v Hoy,(19*68) 260 Cal.. App. 2d. 372, 375-377 Judge was of the opinion that, having been presented with the issue by Defendants, the District Court became a " reviewing court " with the above responsibility. In this he believed that he was supported by the decision in *Moore v Perry*, Tex. 56, S.W. 120, 121, which is " When a judgment is void it is a nullity wherever it is invoked, and it may be attacked collaterally in any court ".

In all his pleadings Judge is supported by statutory or judicial authority and thus his pleadings should not be characterized as frivolous and he is not "resorting to a reliance on " proc-

edural technicalities ". (App. page 8)

CONCLUSION

For the foregoing reasons the Writ of Certiorari should be granted

Respectfully submitted,

John E. Judge,
2915 West Charleston Blvd.,
Suite # 7,
Las Vegas,
Nevada, 89102

Petitioner

App. 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 98 - 16227
CT/AG # ; CV-96-00972-PMP

RECEIVED
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BY DEPUTY

FOXFORD INVESTMENT
JOHN E. JUDGE
Plaintiffs - Appellants

vs

JAMES W. HATCH, HATCHCO INC.
HATCHCO INC. EMPLOYEE PENSION
Defendants - Appellees

APPEAL FROM the United States District Court for the District of Nevada. (Las Vegas) .

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Nevada (Las Vegas) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is

AFFIRMED.

Filed and entered February 15, 2000.

App. 2

UNITED STATES DISTRICT COURT
District of NEVADA
JUDGMENT IN A CIVIL CASE

FOXFORD INVESTMENT COMPANY LIMITED
and JOHN E. JUDGE, ASSIGNEE
Plaintiffs

vs CV-S-96-972-PMP (LRL)

JAMES W. HATCH, HATCHCO INC. and
HATCHCO INC EMPLOYEE PENSION PLAN

X **Decision by Court.** This action came to be considered by the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Defendants' Motion to Dismiss the complaint is GRANTED with prejudice.

JUDGMENT IS HEREBY ENTERED in favor of Defendants and against Plaintiffs

June 5, 1998
Date

Lance S. Wilson
Clerk

/ signature
(By) Deputy Clerk

App. 3

UNITED STATES DISTRICT COURT
District of NEVADA

FOXFORD INVESTMENT COMPANY LIMITED, and JOHN E. JUDGE, ASSIGNEE

CV-S-96-00972-PMP (LRL)

Plaintiffs

vs

ORDER

JAMES W. HATCH, HATCHCO INC. and HATCHCO INC. EMPLOYEE PENSION PLAN.

Defendants

Presently before the Court is Defendants Hatchco Inc.Hatchco Inc Employee Pension Plan ("Hatchco") and James W. Hatch's Motion To Dismiss and Request for Sanctions (#36) filed on February 19, 1998. Plaintiff John E. Judge, ("Judge") filed a Response # 42 on April 17, 1998. Hatchco filed a Reply # 43 on April 30, 1998.

1. Factual Backgroound

Judge's complaint arises out of a loan for several hundred thousand dollars made by Hatchco to Judge in the 1980's. Judge secured a loan from Hatchco with his family residence. Judge

App. 3 - contd.

defaulted on the loan and Hatchco foreclosed on the house and evicted Judge and his family. Since the foreclosure Judge has filed 19 lawsuits involving the facts surrounding the loan, the default and foreclosure. In the present case Judge alleges that Hatchco was never a legally formed pension plan and therefore it was unable to hold or transfer title to real property. Judge has previously brought these claims in California state courts In April 1992 California Suprior Court Judge Parkin dismissed three of Judge's cases based on res judicata and failure to prosecute, declared him a vexatious litigant and sanctioned Judge, allowing him to file further complaints only with approval of the court. Judge Parkin also ordered Judge to pay $46, 261.75 in attorney's fees to Hatchco and James and Ingrid Hatch, and $10,000 in court costs to Los Angeles County. The California Court of Appeal affirmed the sanctions, the vexatious litigant determination and the dismissal for failure to prosecute. Judge has never paid any of these sanctions.(Motion to Dismiss, # 36 Ex. K at 13 11. 15-28).

Judge next filed another motion to set aside the unlawful detainer judgment in Los Angeles Superior Court Case No.

App. 3 - contd.

SWC 110457. The Court determined that Judge, his wife, Kathleen and son Sean were vexatious litigants. All three individuals were ordered to deposit $50,000 with the court before proceeding with the litigation, (Motion to Dismiss, # 36 Ex. E). This decision was also appealed and affirmed.

In December of 1995, Judge initiated approximately his 19th lawsuit involving these facts. Defendant James Hatch and Hatchco filed a Motion to Show Cause re Contempt . A contempt hearing was held, and Judge informed Superior Court Judge O'Neil that he would not file further actions regarding this matter. Nonetheless Judge filed an appeal of Judge O'Neil's Order and petitioned for rehearing and review by the California Superior Court. Both of these motions were denied.

Having reached the end of his litigation possibilities in the California state court Judge filed the current lawsuit, based on the same facts as the 19 previous lawsuits, in the District of Nevada in 1996. His original Complaint before this Court filed on October 17, 1996 was dismissed for a lack of jurisdiction Judge appealed to the Ninth Circuit Court of Appeals. The 9th. Circuit affirmed this Court's ruling on the jurisdictional issue,.

App. 3 - contd.

but remanded to allow Judge to attempt to cure those jurisdictional deficiencies. 1997 WL (9th Cir.) at *1.The current Complaint contains allegations which are identical to the allegations in the original Complaint, but also contains an allegation that Judge is a resident of Nevada.

11. Hatchco's Motion to Dismiss.

Hatchco moves to dismiss Judge's claim on the following basis (1) Judge has fully and finally adjudicted these issues, and is collaterally estopped from asserting these causes of action anywhere at any time ; (2) this Court lacks jurisdiction to invalidate a final order of a California Court; (3) the California court's finding that Judge is a vexatious litigant should bar the present action beforethis court; (4) Judge is not a citizen of Nevada, and his allegation of residence is a fraud upon this Court; and (5 Judge, a pro se plaintiff, cannot represent a corporation such as Foxford Investment Company Limited. By footnote 2 the Court states that " Foxford Investment Company may not be represented by Judge who is appearing pro se ". Hatchco also asks this Court to impose Rule 11 sanctions on Judge, including a short term of imprisonment and an order prohibiting

App. 3 - contd.

Judge from filing further lawsuits in the District Court without the leave of court and posting of a litigation bond.

A. Request to Set Aside California Judgments.

Judge asks this Court to set aside and void the order of the California Superior Court in Case No. SWC 110457 and to set aside the Trustee's Deed relating to the property at issue. A federal district court does not have jurisdiction to grant Judge's requested relief. See Branson v Nott. 62 F. 3d. 287, 292, (9th Cir. 1995). All of Judge's claims in his current complaint (#37) have been fully litigated and resolved in over 19 separate California state court cases. As " courts of original jurisdiction, federal district courts have no authority to review the final determinations of a state court in judicial proceedings ". Id. 291. Judge's only response in his Opposition (#42) is that this Court struck his First Amended Complaint on February 19, 1998, at 8:42 a.m. for failure to attach Proof of Service, and that Defendants filed their Motion to Dismiss on February 19, 1998, at 3:04 p.m. Therefore, there was no complaint on file at the time Defendants filed their Motion to Dismiss. This Court has already denied Judge's Motion to Strike Defendants' Motion to Dismiss (# 39) on this basis (# 41). Judge also

App. 3 - contd.

claims that since Defendants did not file a second Motion to Dismiss referring to the First Amended Complaint (which was refiled on February 25, 1998), Judge is entitled to Default Judgment. However, because Judge's First Amended Complaint filed on February 25, 1998, was identical to the the Complaint filed six days earlier on February 16, 1998 this Court denied Judge's Motion for Default Judgment (#40) and instead ordered Judge to respond to Defendants' Motion to Dismiss (# 41).

Judge is attempting to avoid the resolution of his claim by resorting to a reliance on proceural technicalities. This Court clearly deemed the original Motion To Dismiss (#36) a response to the Complaint filed on February 25, 1998, and so notified Judge, allowing him time to respond to that motion. Therefore, the Motion is properly before this Court for decision. Because this Court is not an appellate forum for state court litigants unhappy with the outcome of state court proceedings, and because this Court lacks jurisdiction to relitigate the claims fully and finally decided in California state court, Judge's First Amended Complaint (#37) is dismissed with prejudice.

App. 3 - contd.

B. Sanctions and Determination that Judge is a vexatious Litigant.

Defendants request that this Court impose Rule 11 sanctions against Judge, including monetary sanctions, a short term of imprisonment and an Order that Judge may not file further lawsuits in District Court without leave of Court and the filing of a litigation bond. This Court concludes from the record before it that Judge is a vexatious litigant, but that because Judge has no ability to pay a monetary penalty, monetary sanctions are not appropriate. The Court has given serious consideration to the possibility of imprisoning Judge but finds it inappropriate to do so at this time.

However this Court concludes, based on Judge's history of frivolous litigation and harassment of the Defendants in this case, that it is appropriate to grant an Order requiring Judge to obtain leave of this Court before filing further lawsuits in the District of Nevada against these Defendants concerning the current subject matter. A district court has the inherent power to issue an order limiting a vexatious litigant's ability to file further lawsuits. Benoza v Target Personnel. Servs. 997 WL 446232 , at. * 1 (N.D. Cal. 1997) In order

App. 3 - contd.

to impose such an Order, four conditions must be met: "(1) plaintiff is given adequate notice to oppose a restrictive pre-filing order before it is entered; (2) the Court provides an adequate record for review including a listing of all the cases and motions that led the court to conclude that a vexatious order was needed; (3) the Court makes substantive findings of the frivolous or harassing nature of the litigant's actions; and (4) the Court order is narrowly tailored". Id.(quoting Johns v Town of Los Gatos, 834 F. Supp. 1230, 1232, (N.D. Cal. 1993)

1. History of Judge's Litigation.

As detailed in part 1 of this Order, Judge has filed 19 law-suits in California state court, where he has been declared a vexatious litigant. Filing multiple, identical suits in state and federal court is a basis for finding that a pro se plaintiff is a vexatious litigant and that a pre-filing prohibition is needed. Benoza, 1997 WL 446232, at *2. As discussed supra, the claims before this Court are identical to the multiple claims filed and finally decided in California state courts. Therefore this Court concludes that a vexatious litigant order is needed to stop Judge's costly and incessant harassment of Defendants.

App. 3 - contd.

2. Frivolous Nature of Judge's Claims.

Judge's claims before this Court are factually identical to the claims filed in California state court. Moreover Judge is merely asking this Court to void the rulings of the California state court. "Bringing a federal claim as a collateral attack on a state court judgment is a factor supporting a court's pre-filing prohibition against a vexatious litigant." Benoza, 1997 WL 446232, at *2. Judge's factually similar, repetitive filings and his attempt to seek appellate review of state court decisions with this Court, illustrate the frivolous nature of his actions.

3. Narrowly Tailored

A pre-filing order is narrowly tailored if it stops a party from relitigating a claim and preserves a pro se plaintiff's access to court for non-frivolous litigation. Benoza, 1997 WL 446232, at *2. Therefore this Court will only limit Judge's ability to bring claims regarding the factual dispute currently before this Court against the Defendants in this case.

IT IS THEREFORE ORDERD THAT Defendants Hatchco Inc., Hatchco Inc. Employee Pension Plan, and James W. Hatch's Motion to Dismiss for Lack of Subject Matter Juris-

App. 3 - contd.

diction (#37) is GRANTED with prejudice.

IT IS FURTHER ORDEREDTHAT Plaintiff Judge must show cause in writing by June 23, 1998, why he should not be declared a vexatious litigant and be subject to a pre-filing Order as follows : IT IS HEREBY ORDERED THAT the Clerk of this Court shall not accept any further complaints by John E. Judge or Foxford Investment Company Limited against Hatchco Inc. Hatchco Inc., Employee Pension Plan, or James W. Hatch until all such complaints have been subjected to pre-filing review by a Judge of this Court.

DATED; May 20, 1998 Philip M. Pro.
United States District Judge.

FILED
NOV - 7 1997
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

App. 4

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FOXFORD INVESTMENT COMPANY; JOHN E. JUDGE,

Plainttiffs-Appellants

v.

JAMES W. HATCH ; HATCHCO INC. HATCHCO INC EMPLOYEE PENSION

Defendants-Appellees

No. 97-15646

D.C. No.CV-96-00972-PMP

MEMORANDUM *

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted November 4, 1997 **

Before: HUG, Chief Judge, PREGERSON and Beezer, Circuit Judges

John E. Judge, a former California attorney, appeals pro se the district court's order denying his Fed. R. Civ. P. 60 (b) motion to reconsider the court's dismissal of Judge's complaint for failing to plead diversity jurisdiction. 1/. We have

App. 4 - contd.

jurisdiction pursuant to 28 U.S.C # 1291.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th. Cir. R. 36 - 3.

** The panel unanimously finds thia case suitable for decision without oral argument. See Fed. R. App. P. 34 (a); 9th. Cir. R. 34 - 4.

1 /. Although the district court did not address whether Foxford Investment Company was properly represented below, we note that Judge may only represent himself in federal court because he is no longer a licensed attorney. See United States v High Country Broad Co., 3 F. 3d. 1244, 1245, (9th. Cir. 1993) We review forabuse of discretion. See Foster v Skinner 70 F. 3rd. 1084, 1087 (9th. Cir.1995)(per curiam). We vacate the district court's order and remand for further proceedings, because we conclude that Judge was entitled to amend his complaint in order to cure the jurisdictional dficiency therein. See Doe v United States, 58 F. 3d. 494, 496-97 (9th. Cir. 1995) ; see also Montrose Chem. Corp. v. American Motorists Ins Co. 117 F. 3d. 1126, 1136 (9th Cir. 1997) (rever-

sing district court's imposition of Fed.R. Civ.P.11 sanctions on law firm that failed to allege diversity jurisdiction in its complaint.

VACATED AND REMANDED. 2 /.

2 / We deny defendants' motion requesting that we, in the first instance, declare Judge to be a vexatious litigant.